



May 24, 2010

Mary Rupp, Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, Virginia 22314-3428

RE: Comments on Proposed Rule 742, Regulatory Flexibility Program

CUAO appreciates the opportunity to provide input on NCUA Proposed Rule on Fixed Assets, Member Business Loans, and Regulatory Flexibility Program.

The Credit Union Association of Oregon (CUAO) is a nonprofit, professional trade association representing Oregon's state, community, and federally chartered credit unions. Since 1936, CUAO has been at the forefront of credit union issues at the state, regional, and national level, and provides a voice for Oregon's 1.4 million credit union members on issues impacting credit unions at a local level.

CUAO applauds NCUA in its work over the years to ease regulatory restrictions for credit unions demonstrating sustained superior performance.

The NCUA Board established a Regulatory Flexibility Program ("RegFlex") in 2001 to exempt qualifying credit unions in whole or in part from a series of regulatory restrictions, and grant them additional powers. The Board has amended RegFlex three times since 2001. In 2005, the NCUA Board reassessed the RegFlex program to ensure its availability to credit unions that are least likely to encounter safety and soundness problems, thus minimizing the risk of loss to the Share Insurance Fund. NCUA noted at the time, "Experience indicates that such credit unions consistently maintain a high net worth ratio and a high CAMEL rating."

RegFlex federal credit unions are generally well-capitalized with a CAMEL 1 or 2 rating. The exemptions that would be removed under the proposal are directed at the following requirements:

- The limit on federal credit union investments in fixed assets, 5% of shares and retained earnings;
- The requirement to obtain the personal liability and guarantee of the borrower for a member business loan;
- The limit on delegating control over the purchase and sale of investments up to 100% of the credit union's net worth; and
- The stress testing for certain investments.

In general, we believe the proposal would dramatically limit the usefulness of the RegFlex program. We cannot support such broad, unnecessary restrictions to RegFlex that would severely limit the ability of well-managed federal credit unions to obtain relief from certain regulatory burdens. We support a more narrowly focused approach on a case-by-case basis and for NCUA to utilize current authority to rescind RegFlex for credit unions with declining performance. We urge the Board to not overreact.

Fixed Assets

Based on four credit union examples noted in this proposal as a “sampling of a larger and common problem,” NCUA reasons that it does not believe it is prudent to continue to exempt RegFlex credit unions from the five percent limit on fixed assets and proposes to rescind that exemption. True, some credit union expansion plans did not work out as planned for various reasons, some beyond their control. Most credit unions made great decisions and their members and communities benefited from the ability to expand beyond the 5% limit.

To rescind this exemption and shut the door to all credit unions based on the negative performance of a few is too drastic a response and not the answer. NCUA should address these issues as a direct part of the examination process and ongoing assessment of each credit union’s performance.

Member Business Loans

The MBL rule requires a credit union making a business loan to obtain the personal liability and guarantee of the business principals as part of the rule’s collateral and security requirements.

Under the current rules, RegFlex credit unions are exempt from that requirement but may choose to require the principals’ guarantee as part of their own underwriting standards and best practices.

NCUA has voiced its support for the increase of MBL limits which at this very moment is being considered by congress. This proposal runs contrary to the agency’s support for increasing the MBL limits. Increasing MBL limits is crucial to a credit union’s ability to serve more of their member’s business loan needs. The guarantee of the principals is not a panacea. This step is not indicated in all cases. It is taken when necessary as a measure of control and an abundance of caution. Control features don’t replace the need for satisfactory plans and reviews. It can be a barrier to meeting the needs of highly qualified business borrowers, especially when this is not a standard practice in commercial banking. The waiver request process is not an acceptable option for most credit unions on an ongoing basis and is not a practical solution.

Discretionary Control of Investments

Generally, NCUA’s investment rule requires an FCU to retain discretionary control over its purchase and sale of investments. Under the current rule, a RegFlex credit union is exempt from the discretionary control requirements in

703.5 that pertain to the 100 percent of net worth limitation. Once again, do not penalize all credit unions for environmental conditions not created by credit unions and where they have no control. Instead focus and additional regulation should be placed only where a particular credit unions reflects the need for such attention. A broad-brush approach is not the answer.

Stress Testing of Certain Investments

At least quarterly, an FCU must prepare a written report based on the calculation known as "stress testing" of their securities. Under the current rules, RegFlex credit unions are exempt from the requirement to stress test their securities. Again, NCUA should not penalize all credit unions based on the performance and experiences of a few. However, it may be appropriate for NCUA to utilize their current authority to withdraw RegFlex on a case-by-case basis where a credit union's performance indicates more control and understanding is necessary.

In Closing

The RegFlex program already allows the agency to rescind RegFlex designations when appropriate. The Board's overreaction to current environmental issues, beyond the control of credit union management, as a basis for increasing regulatory burden for all, is poor timing at best. For well managed credit unions it makes no sense to draw in the reigns when their sustained good performance can be established. The misfortune of some can be opportunities for others.

Thank you for affording us the opportunity to comment, and I sincerely appreciate your consideration.

If you have any questions or would like further information, please feel free to contact me at the CUAO office, 800-688-6098 ext 214.

Respectfully Submitted,



Janet M. Josselyn
Director of Compliance Services
Credit Union Association of Oregon
503-641-8420